IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 19...

No. 76-1331

ESKEL NORBECK,
Petitioner,

vs.

DAVENPORT COMMUNITY SCHOOL DISTRICT; H. H. WEST; JACK SMIT; DALE E. PAUSTIAN; LAFAYETTE J. TWYNNER, Individually and in Their Capacity as Members of the Board of Directors of the Davenport School Community District,
Respondents.

PETITION FOR A WRIT OF CERTIORARI

To the United States Court of Appeals for the Eighth Circuit

JOHN R. HEARN
PAYTON and HEARN, P.C.
1300 Locust Street
Des Moines, Iowa 50309
Attorneys for Petitioner

St. Louis Law Printing Co., Inc., 812 Olive Street 63101 314-231-4477

INDEX

Cases

Constitutional Provisions

Statutes

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 19...

No. .....

ESKEL NORBECK,
Petitioner,

vs.

DAVENPORT COMMUNITY SCHOOL DISTRICT; H. H. WEST; JACK SMIT; DALE E. PAUSTIAN; LAFAYETTE J. TWYNNER, Individually and in Their Capacity as Members of the Board of Directors of the Davenport School Community District,
Respondents.

PETITION FOR A WRIT OF CERTIORARI

To the United States Court of Appeals for the Eighth Circuit

The Petitioner, an individual, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Eighth Circuit entered in this proceeding on November 29, 1976 and to review that court's December 28, 1976 denial of Petitioner's Petition for Rehearing.

OPINION AND ORDER BELOW

The opinion of the Court of Appeals is reported at 545 F. 2d 63 (8th Cir. 1976). It also appears herein at Appendix A. That court's order denying the Petition for Rehearing appears herein at Appendix B.

JURISDICTION

On the 29th day of November, 1976, the Circuit Court filed its opinion and Judgment. Petitioner's timely Petition for Rehearing was denied by the Circuit Court on December 28, 1976. The jurisdiction of this Honorable Court is invoked pursuant to Title 28 U.S.C. section 1254(1).

QUESTIONS PRESENTED

1. When and how is a claim for deprivation of First Amendment rights presented to a jury. That is, in such a context, what are factual issues for the jury; what are issues of law for the court; and in what manner are factual issues submitted to a jury as required by the provisions of the Seventh Amendment to the United States Constitution.

2. Whether the Circuit Court denied Petitioner his Seventh Amendment right to a jury trial in treating the question of whether Petitioner's activities were constitutionally protected as a question of law for the court rather than as one of fact for the jury.

CONSTITUTIONAL AND STATUTORY PROVISIONS

The Fifth and Seventh Amendments to the Constitution of the United States and Title 42 U.S.C. section 1983 are set forth in their entirety herein at Appendix C.

STATEMENT OF THE CASE

The Board of Directors of the Davenport, Iowa, Community School District terminated the written teaching contract of Eskel Norbeck, the principal of Central High School, in Davenport, Iowa, effective the 1972-73 school year. Eskel Norbeck filed suit against the board members and the school district pursuant to Title 42 U.S.C. section 1983, alleging that the school board had terminated his employment contract in reprisal for his activities with the Davenport Education Association, the teachers' union. Eskel Norbeck also alleged that he had been denied both procedural and substantive due process by the board's failure to renew his contract. He predicated federal jurisdiction on Title 28 U.S.C. sections 1331, 1343 (3) and 1343 (4), and asserted pendant jurisdiction over claims for breach of contract and the board's failure to comply with the procedural requirements of Iowa Code Section 279.13 (1971), the continuing teacher contract statute.

The District Court dismissed or disposed of all claims prior to trial except the claim brought pursuant to Section 1983, alleging a violation of Petitioner's First Amendments rights to freedom of speech and association. In addition, the District Court dismissed the suit against all of the Defendants, except the four school board members who had voted to terminate his contract. The case was tried to a jury, and it returned a verdict in favor of the four school board members.

Eskel Norbeck timely filed a Motion for a New Trial asserting a variety of trial court errors, including the jury instructions and the District Court's pre-trial rulings. The trial court overruled the motion, and Eskel Norbeck timely appealed to the United States Court of Appeals for the Eighth Circuit. On appeal, Petitioner challenged the jury instructions and the District Court's pre-trial rulings. The Circuit Court affirmed the District Court's judgment in favor of each of the Defendants

and held: (1) as a matter of law, Petitioner's activities with the Davenport Education Association were not constitutionally protected and the case, therefore, should not have been submitted to the jury and (2) the District Court properly dismissed the claimed denial of procedural due process and the breach of contract claim of Petitioner's Complaint. (545 F.2d at 68).

On December 9, 1976, Petitioner filed a Petition for Rehearing asserting the Seventh Amendment questions now presented before this Honorable Court. On December 28, 1976, the Circuit Court issued its Order denying Petitioner's Petition for Rehearing.

The facts relevant to the questions presented by this Petition may be introduced to this Court in a summary fashion.

The Davenport Community School District hired Eskel Norbeck in 1968 to serve as high school principal at Davenport Central High School, Davenport, Iowa. At that time, Norbeck joined the local teacher's association, the Davenport Education Association (DEA). During the 1971-72 school year, the DEA and the school district were governed by a master contract entitled "Professional Communication Agreement" (PCA). The PCA recognized the DEA as the representative of all certified personnel of the school district, excluding the superintendent and his executive directors. Thus, pursuant to the PCA, school principals and other supervisory personnel were included in the bargaining unit for the purposes of negotiation. The PCA also provided that the school board would not "discriminate" against any teacher for his DEA membership or participation in DEA activities. This PCA went into effect on July 1, 1971 and was to continue in effect until June 30, 1972.

In 1971, the DEA elected Eskel Norbeck to serve as its chief negotiator. Negotiations over a new PCA was begun on January 17, 1972, with negotiating sessions being held on January 31, February 7, and February 14, 1972. The discussions

included the school board's proposal to exclude principals and other supervisory personnel from the bargaining unit represented by the DEA.

After the February 14 negotiation session, the board of education met in executive session to consider whether to terminate Eskel Norbeck's teaching contract. At the close of the executive session, the board voted to notify Norbeck of its intent to terminate his teaching contract. The vote was six to one in favor of termination.

On March 29, 1972, after being informed of the board's decision and after requesting notification of the board's reasons therefore, Norbeck received a letter containing four reasons for non-renewal of his contract. The reasons given were:

1. You are not performing your present duties satisfactorily and the board held up your normal increment in 1970-71 school year based upon a poor performance rating in your present position. You have failed to substantially improve since your last rating report.
2. You have demonstrated poor judgment in our opinion in reporting and following through on difficult problems.
3. You are not forceful enough in our opinion to provide leadership and maintain good discipline of the students at Central High School.
4. Reports by various individuals to the board indicate that you lack ability to relate to parents and follow through on student problems.

Norbeck timely requested a public hearing and a written copy of the specific examples of instances relating to his management of the school. On May 10, 1972, school superintendent Harold Kaiser, responded to Eskel Norbeck's request for specific examples of the reasons earlier provided for non-renewal:

1. Your handling of the 1971 Homecoming Queen election.

2. Your failure to make recommendations concerning the 1971 readmission of a former Central High School student.

3. Your handling of the proposal to keep seniors in school for final evaluation at the close of the 1970 year.

4. Your handling of budget and physical plant and maintenance proposals to the administration.

5. Your efforts to seek additional employment.

6. Conflict of interest resulting from your acting as chief negotiator for the DEA.

7. Evaluation of teachers under your jurisdiction.

8. Problems concerning maintenance of reasonable order and discipline in the school.

A public hearing was held on May 15, 1972. Dale Paustian, the board president, read a prepared statement. In that statement, Paustian spoke in terms of Norbeck's "poor judgment." One of the examples of poor judgment cited by Paustian was, in his opinion, Norbeck's role as negotiator for the DEA. At the close of the hearing, board members voted four to three not to renew Norbeck's contract for the next school year.

REASONS FOR GRANTING THE WRIT

I. **This Case Raises Crucial Seventh Amendment Questions. At Trial, Petitioner Claimed Various Deprivations of Constitutional Rights. The Case Was Tried to a Jury in the District Court. The Jury Returned a Verdict for the Defendants. Petitioner Appealed, Urging, Among Other Assignments of Error, Erroneous Jury Instructions. The Court of Appeals for the Eighth Circuit Failed to Consider the Propriety of the Jury Instructions. Rather, the Court Reviewed the Facts of the Case and Ruled as a Matter of Law That the Respondent Had Proved That It Had a Compelling Interest in Depriving Petitioner of Such Rights. In So Doing, the Circuit Court Usurped the Jury's Prerogative as the Fact-Finder. This Court Should Grant Certiorari in Order to Delineate When and How a First Amendment Claim Should Be Submitted to a Jury.** [Certiorari granted in similar cases where Seventh Amendment questions have been raised: **Pernell v. Southall Realty,** 416 U.S. 363 (1974), **Curtis v. Loether**, 415 U.S. 189 (1974); **Atlantic & Gulf Stevedores, Inc. v. Ellerman Lines, Limited,** 369 U.S. 355 (1962)].

A

Current First Amendment protection analysis requires the application of a "balancing test" and necessarily involves the finding of facts; accordingly, when a first amendment claim is tried to a jury, this process of balancing the interests of the governmental entity against the First Amendment rights of the individual must be undertaken by the jury, pursuant to proper instructions from the court.

Petitioner here asserts, and it was not disputed in the District Court below, that the "balancing test" as articulated by this Court in *Pickering v. Board of Education,* 391 U.S. 563 (1968) is the correct standard to be applied in determining if

Petitioner's associational activities are constitutionally protected. In the context of this case, the "balancing" analysis requires that the school board's interests in promoting school district administrative efficiency be weighed against the Petitioner's rights to freedom of speech and association attendant to his membership in and negotiation on behalf of the teachers' union.

Petitioner's theory of his case as embodied in his requested jury instructions was as follows:

1. That his activities of joining, and negotiating on behalf of, the DEA fell within the scope of the First Amendment. *Healey v. James*, 408 U.S. 169, 181 (1972).

2. That the United States Constitution and the American legal system attach great significance to First Amendment freedoms and that the legal system demands strict scrutiny of any restrictions placed upon these freedoms. *NAACP v. Button*, 371 U.S. 415 (1962); *NAACP v. Alabama*, 357 U.S. 449 (1958).

3. That, while the First Amendment freedoms of speech and association encompass the right of a public employee to join and negotiate on behalf of an employees' union, such right is not absolute. *Pickering v. Board of Education*, 391 U.S. 563 (1968).

4. That, in the exercise of his First Amendment freedoms, Petitioner could not allow his activities to substantially interfere with his duties as principal.

5. That Respondents had the burden to show a sufficiently important state interest outweighing the significance of Petitioner's First Amendment rights in order to justify infringing upon those rights. *Tinker v. Des Moines Community School District*, 393 U.S. 503, 509 (1969); *Pickering v. Board of Education*, 391 U.S. 563, 572 (1968).

As is well-established, Petitioner had a right to have the Court instruct the jury as to his theory of the case. *Kerr v. City of Chicago*, 424 F. 2d 1134, 1139 (7th Cir. 1970). Consideration of a complainant's First Amendment case and application of the "balancing test" cannot be undertaken without the analysis and finding of facts. Accordingly, proper instructions to the jury would include adequate delineation of Petitioner's theory, or at least, adequate treatment of the issues of First Amendment freedoms, the balancing of interests and burdens of proof.

B

The circuit court denied petitioner his Seventh Amendment rights when it re-examined the facts of the case as tried to the jury and balanced for itself the respondents' governmental interests against the First Amendment rights of the petitioner.

The Seventh Amendment to the United States Constitution provides that:

> In suits at common law, when the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

In the District Court below, the fact that a complainant is entitled to a jury in a case brought pursuant to Title 42 U.S.C. section 1983 was not contested by the Respondents. However, Petitioner asserts that he was, in effect, denied his right, or his right was infringed upon, when the Circuit Court failed to review his assignments of error and concluded after lengthy factual analysis that his activities were not constitutionally protected.

The Circuit Court's opinion is replete with instances where it assumed that the responsibility of finding and applying facts.

The Court preliminarily set the stage for its analysis with this invocation: "We must determine whether under the *factual* setting of the case, Norbeck enjoyed a constitutional right to act as chief negotiator for the DEA." 545 F. 2d at 67. [emphasis added]. The Court then proceeded to outline the essentials of Petitioner's theory of the case; i.e., the nature and extent of First Amendment rights, the balancing of interests and the burden of proof. 545 F.2d at 67. In its final analysis, the Court held:

> We conclude, under the existing *factual* circumstances, that the interest asserted by the school board in efficient school board administration is paramount to the right of a school principal to collectively bargain for classroom teachers who he was hired to supervise, discipline and evaluate. 545 F. 2d at 67. [emphasis added].

The Court thus found that the school board had met its burden of showing a sufficiently important state interest to justify infringing upon the Petitioner's First Amendment rights. Here, the Circuit Court unquestionably usurped the jury's function.

Petitioner contends that the effect of the Circuit Court's opinion is to deny a complainant the right to a jury trial on the issue of liability in a First Amendment case. The Circuit Court couched its decision in terms of a rationale for why the District Court should have directed a verdict, 545 F.2d at 66. However, the opinion actually takes the process of finding and applying facts—specifically the utilization of the "balancing test"—from the jury and gives it to the court. In a First Amendment case, the question of whether speech or associational activity is constitutionally protected is not a question of law solely for the Court, as stated by the Circuit Court. 545 F.2d at 68. Because of the "balancing test" and current First Amendment legal analysis, the finding and application of facts is an essential, integral part of the resolution of a First Amendment claim. This is clearly the jury's function and should be undertaken by it pursuant to proper instructions from the Court.

CONCLUSION

The place and function of the jury in the resolution of conflicts is of the utmost importance. The Seventh Amendment raises the importance of the jury to Constitutional proportions. When a jury is utilized in a case where fundamental constitutional rights are being defined and applied, the right to a jury trial becomes even more significant.

Petitioner submits that the Circuit Court erred and contravened the mandates of the Seventh Amendment when it re-examined the facts as tried to the jury and balanced for itself the conflicting interests of the parties. The Court should have confined itself to the issues raised by Petitioner's assignments of error and reviewed the appeal accordingly.

Thus, Petitioner respectfully requests that this Honorable Court grant the Petition for Writ of Certiorari for further consideration of the appropriate method for submitting a First Amendment civil rights claim to a jury.

Respectfully submitted,

JOHN R. HEARN
PAYTON and HEARN, P.C.
1300 Locust Street
Des Moines, Iowa 50309
Attorney for Petitioner

APPENDIX

APPENDIX A

United States Court of Appeals
For the Eighth Circuit

No. 75-1613

Eskel Norbeck, Appellant, v. Davenport Community School District, et al., Appellees.	Appeal from the United States District Court for the Southern District of Iowa.

Submitted: June 16, 1976

Filed: November 29, 1976

Before Gibson, Chief Judge, and Lay and Bright, Circuit Judges.

Lay, Circuit Judge.

The Board of Directors of the Davenport Community School District did not renew the contract of Eskel Norbeck, the principal of Central High School for the 1972-73 school year. Norbeck brought suit against the board members[1] and the school district under 42 U.S.C. § 1983, claiming that the nonrenewal of his contract (1) was illegally based upon the exercise of his constitutional right to act as chief negotiator for the Davenport Education Association, and (2) constituted a denial of proce-

---

[1] Norbeck named, as individual defendants, the seven board members at the time of the nonrenewal. Of these seven, four members had voted not to renew his contract: H. H. West, Jack Smit, Dale Paustian and Lafayette Twynner.

dural due process. Jurisdiction over the federal claims was asserted under 28 U.S.C. §§ 1331, 1343(3) and 1343(4). Norbeck also asserted a claim for breach of contract, and the board's failure to conform with the procedural requirements of Iowa Code § 279.13 (1971).

The district court dismissed all claims except the one brought under § 1983, alleging a violation of his right of association. In addition the district court dismissed all the defendants, except the four board members who had voted not to renew his contract. After a 10-day trial the jury returned a verdict in favor of the four board members.

On appeal Norbeck challenges the jury instructions and the district court's pre-trial rulings. He asserts that the district court erred in instructing the jury concerning his First Amendment rights, the immunity of the board members and punitive damages. In addition he claims that the district court should not have dismissed: (1) the school district as a party to Count I, since he had alleged jurisdiction under 28 U.S.C. § 1331; (2) his breach of contract claim (Count II); (3) his claim based upon denial of procedural due process (Count III); and (4) his claim for a violation of Iowa Code § 279.13 (1971) (Count III). He also asserts that the district court erred in refusing to allow him to amend his complaint to include a charge of conspiracy under 42 U.S.C. §§ 1985 and 1986.[2] We affirm the order of the district court dismissing the complaint as to all defendants and the entry of the judgment on the jury verdict in favor of the individual board members.

---

[2] Before trial Norbeck attempted to amend his complaint to allege a conspiracy under 42 U.S.C. §§1985 and 1986 against the four board members who voted not to renew his contract. The district court refused to allow the amendment, stating that there was no allegation that the defendants' conduct denied Norbeck equal protection of the laws, or that their conduct was motivated by racial or other class based animus.

I

Eskel Norbeck was hired as principal by the Davenport Community School District in 1968. At that time he joined the local teachers' association, the Davenport Education Association (hereinafter DEA). In 1971 the DEA elected Norbeck to serve as the chief negotiator for the teachers in their negotiations with the school district. During the 1971-72 school year the DEA and the school district were governed by a contract entitled "Professional Communication Agreement" (PCA). The PCA recognized the DEA as the representative of all certified personnel of the school district except the superintendent and his executive directors. Thus school principals and other supervisory personnel were included in the bargaining unit. The PCA also provided that the board would not "discriminate" against any teacher for his DEA membership or participation in DEA activities. The PCA was ratified by the board and the DEA, and became effective on July 1, 1971, and was to continue in effect until June 30, 1972. Norbeck's 1971-72 teaching contract was for the same time period.

Negotiation over a new PCA was commenced on January 17, 1972, and subsequent negotiating sessions were held on January 31, February 7, and February 14. The discussions centered on the school board's proposal to exclude all supervisory personnel, including principals, from the bargaining unit represented by the DEA.

The evening of February 14, after the negotiation session, the board met in executive session to consider whether to renew Norbeck's teaching contract. At this session the board members discussed Norbeck's teacher evaluations, discipline at Central High School, his administrative skills, his poise and tact, and his role as a negotiator for the DEA. The board voted 6 to 1 to have Harold Kaiser, the superintendent, inform Norbeck of their intention not to renew his contract.

After being informed of the board's decision and requesting reasons therefor, Norbeck received a letter dated March 29, 1972, containing the four reasons for nonrenewal. The reasons given were: (1) unsatisfactory performance; (2) poor judgment; (3) inability to maintain discipline; and (4) inability to relate to parents and follow through on student problems.

On April 28, 1972, Norbeck, by letter to the board, requested a public hearing, and a written copy of the specific examples of incidents relating to his management of the school. On May 10, 1972, Kaiser responded to Norbeck's request for the specific examples of reasons for nonrenewal. The letter, in part, provided:

> You have heretofore been provided with the four reasons why the School Board considered termination of your contract. At the private hearing held with you on April 8, 1972, individual examples of matters relating to your management of Central High School were discussed. These include:
>
> 1. Your handling of the 1971 Homecoming Queen Election.
>
> 2. Your failure to make recommendations concerning the 1971 readmission of a former Central High School student.
>
> 3. Your handling of the proposal to keep seniors in school for final evaluation at the close of the 1970 year.
>
> 4. Your handling of budget and physical plant and maintenance proposals to the Administration.
>
> 5. Your efforts to seek additional employment.
>
> 6. *Conflict of interest resulting from your acting as chief negotiator for the D.E.A.*
>
> 7. Evaluation of teachers under your jurisdiction.

> 8. Problems concerning maintenance of reasonable order and discipline in the school.

(Emphasis added).

A public hearing was held on May 15, 1972. Dale Paustian, the board president, summarized the four reasons contained in Kaiser's letter of March 29, 1972. He then proceeded to discuss numerous instances supporting these reasons. One of the examples of poor judgment cited by Paustian was Norbeck's role as negotiator for the DEA.[3] At the close of the meeting, board members voted 4 to 3 not to renew Norbeck's contract for the ensuing school year.

II

At trial the district court denied the defendants' motion for a directed verdict, and submitted to the jury the issue of whether Norbeck, in acting as chief negotiator for the DEA, was exercising his constitutionally protected right of association.

---

[3] Mr. Paustian stated:

> Perhaps the most extraordinary example of Mr. Norbeck's failures in judgment relates to his position with the Davenport Education Association, which includes principals, supervisors and teachers. Mr. Norbeck is paid a substantial sum of money each year to manage Central High School. *He has a legal and moral duty of allegiance to the Board and to the administration; in fact, he is a part of management.* Nevertheless, he has seen fit to accept the position of chief negotiator for the Davenport Education Association, in its bargaining negotiations on behalf of the teachers. Mr. Norbeck has thus placed himself in a direct conflict of interest situation. He cannot properly represent management and at the same time represent the teachers who are bargaining collectively in opposition to management.
>
> I do not believe that this conflict of interest situation is merely theoretical and has no practical consequences. *Consider for example the pressures or temptations that must necessarily influence any administrator in his job of evaluating the performance of teachers whom he also represents.*

(Emphasis added.)

Since we find that the district court should have directed a verdict in favor of the defendants, it is not necessary to discuss the alleged errors in the jury instructions, or the propriety of the dismissal of the school district as a party defendant.

Norbeck's complaint is that in retaliation for the exercise of his First Amendment right to serve as the chief negotiator for the DEA, his contract was not renewed. He asserts that the non-renewal or termination of a nontenured public school teacher's contract may not be predicated on the exercise of the teacher's constitutional rights. *See Perry v. Sindermann*, 408 U.S. 593 (1972); *Pickering v. Board of Education*, 391 U.S. 563 (1968); *Keyishian v. Board of Regents*, 385 U.S. 589 (1967); *Shelton v. Tucker*, 364 U.S. 479 (1960); and *Scheelhaase v. Woodbury Central Comm. School Dist*, 488 F.2d 237 (8th Cir. 1973).

Assuming, *arguendo*, that Norbeck's contract was not renewed for reasons which included his role as chief negotiator for the DEA, we view the fundamental question to be whether a school board may constitutionally consider, in evaluating the job performance of a school principal, his participation in bargaining sessions with the school board as chief negotiator for a teachers' association.

Norbeck, as principal of Central High School, was the chief administrator for that facility, and was responsible for its physical structure, educational program, staff and students. His discretion in fulfilling these responsibilities was subject to the policy guidelines of the school board, as administered by the superintendent and his staff. The evidence demonstrated that one of his primary responsibilities was the supervision, evaluation and coordination of the work of the teaching staff. As principal, Norbeck worked closely with the school district's director of personnel in the hiring of teachers for Central High School. It was also his duty to evaluate a teacher's performance, and report his findings to the superintendent, so that in case of

a deficiency, a proper solution, including disciplinary action, could be found. Also, as principal, Norbeck was the primary administrator at stage one for any teacher grievance.

In asserting his constitutional claim, Norbeck relies in part on the provision of the 1971-72 master agreement (the PCA) with the DEA, which provided that the board would not "discriminate" against teachers for their DEA activities. Assuming that Norbeck had a contractual right to become a member of the DEA, and serve as its chief negotiator, this alone does not create a constitutional right. We must determine whether under the factual setting of the case, Norbeck enjoyed a constitutional right to act as chief negotiator for the DEA.

Freedom of association is a "basic constitutional freedom" that is "closely allied to freedom of speech and a right which, like free speech, lies at the foundation of a free society." *Buckley v. Valeo*, 96 S.Ct. 612, 637 (1976). The right of association encompasses private and public employees' union membership. *See Perry v. Sindermann, supra; Keyishian v. Board of Regents, supra; Thomas v. Collins*, 323 U.S. 516 (1945); *American Fed. of State, County & Municipal Emp. v. Woodward*, 406 F.2d 137 (8th Cir. 1969); *Confederation of Police v. Chicago*, 382 F. Supp. 624 (N.D. Ill. 1974); and *Teamsters Local 594 v. West Point*, 338 F. Supp. 927 (D. Neb. 1972). Teachers and other public school employees are no different than other public employees, and have a constitutional right to join a union. *McLaughlin v. Tilendis*, 398 F.2d 287 (7th Cir. 1968); and *Local 856, AFT v. School Dist. No. 1*, 314 F. Supp. 1069 (D.Col. 1970).

However, the right to associate, like freedom of speech, is not absolute. *See United States Civil Service Comm'n v. National Ass'n of Letter Carriers*, 413 U.S. 548, 567 (1973). Even a significant interference with an individual's freedom of association may be sustained if there exists a sufficiently important state interest, and the means employed are nar-

rowly drawn to avoid unnecessary abridgment of associational freedoms. *Cousins v. Wigoda*, 419 U.S. 477 (1975); *Shelton v. Tucker, supra;* and *NAACP v. Alabama*, 357 U.S. 449, 460-61 (1958).

In an educational context the courts have balanced a teacher's right of association against a state's interest in the "orderly administration of a school system," *Whitsel v. Southeast Local Sch. Dist.*, 484 F.2d 1222, 1229 (6th Cir. 1973), and the maintenance of a "properly moral and scholastic environment." *Sullivan v. Meade Indep. Sch. Dist. No. 101*, 530 F.2d 799, 804 (8th Cir. 1976). The Supreme Court, in discussing a teacher's right of free expression, has stated that a state has an interest "in promoting efficiency of the public services" which includes maintenance of "discipline by immediate superiors" and "harmony among coworkers" and the preservation of those "relationships . . . [which require] personal loyalty and confidence . . . [for] proper functioning." *Pickering v. Board of Education, supra* at 568 and 570. *Cf. Elrod v. Burns*, 96 S.Ct. 2673 (1976) (plurality opinion) (non-policy making, nonconfidential government employee cannot be discharged because of political beliefs and associations).

We conclude, under the existing factual circumstances, that the interest asserted by the school board in efficient school administration is paramount to the right of a school principal to collectively bargain for classroom teachers who he was hired to supervise, discipline and evaluate. A school board is properly concerned over conflicts relating to the maintenance of discipline and co-worker harmony. More importantly, the board members were properly concerned with whether the close working relationship among a principal, superintendent and school board was threatened by Norbeck's role as chief negotiator for the DEA.

The exclusion of supervisory personnel from collective bargaining rights enjoyed by other employees is not new in the

law as "[m]anagement, like labor, must have faithful agents." *Beasley v. Good Fair of North Carolina, Inc.*, 416 U.S. 653, 660 (1974). This concept was embodied in the Taft-Hartley Act, which amended the National Labor Relations Act to exclude supervisors from the Act's protections, thus freeing employers to discharge supervisors without violating the Act's restraints against discharges on account of labor union membership. *See Beasley, supra* at 654-55; 29 U.S.C. §§ 152(2), 152(11) and 164(a).

In *Elk Grove Firefighters Local 2340 v. Willis*, 400 F. Supp. 1097 (N.D. Ill. 1975), *aff'd*, unpublished order No. 75-2017 (7th Cir., July 1, 1976), the court held that the state's interest in an efficient fire department was sufficient to warrant the prohibition of fire department captains and lieutenants from joining a union which consisted of rank and file firefighters who the officers were hired to supervise, discipline and evaluate. *See also Shelofsky v. Helsby*, 32 N.Y.2d 54, 343 N.Y.S.2d 98, 295 N.E.2d 774, *appeal dismissed*, 414 U.S. 804 (1973).

Applying these principles, we conclude that the school district's interest in the maintenance of an efficient school administration was sufficient to justify the nonrenewal of Norbeck's contract. The evidence demonstrated that Norbeck actively participated, in collective bargaining with his employers, for an association of teachers who he was hired to supervise, evaluate and discipline. The majority of the board considered this conduct evidence of "poor judgment." The nonrenewal was not overly broad, as it did not prohibit Norbeck from joining any union, particularly one of his peers. Whether Norbeck was lawfully exercising a constitutional right was a question for the court and not for the jury. We find, even assuming the truth of Norbeck's contention, that the evidence failed to show any infringement of a constitutional right and should not have been submitted to the jury as a possible basis of recovery under § 1983.

III

As to the remaining contentions, we hold that the district court properly dismissed Counts II and III, and properly disallowed Norbeck's proposed amendments alleging a conspiracy under 42 U.S.C. §§ 1985 and 1986.

In Count II Norbeck alleged that the defendant's non-renewal of his contract violated the anti-discrimination clause of the 1971-72 PCA, which was incorporated by reference into his teaching contract for the 1971-72 school year. Norbeck contends that the school board, under the PCA, had agreed to allow him membership and participation in the DEA during his contract term. This may be true, however, this agreement did not prevent the board from making a subjective evaluation that Norbeck had exercised bad judgment by acting as chief negotiator for the teachers. In dismissing Count II the district court held that the undisputed facts revealed a nonrenewal of his contract for the ensuing school year and not a discharge during the contract period. We agree.

Under Iowa law, the terms of Norbeck's contract and the PCA, the board was under no affirmative obligation to renew Norbeck's contract. Norbeck's contract as well as the master agreement were subject to negotiation on a yearly basis. Norbeck's rights under his existing contract were not terminated during the term of the contract.

For these reasons we sustain the dismissal of the claims under Count II and therefore do not pass on the jurisdictional question raised.

The substance of Norbeck's allegation in Count III, asserting a denial of procedural due process requirements under the Fourteenth Amendment and Iowa Code § 279.13, was that the board was not an impartial tribunal. As a prerequisite to an

assertion of a due process right, a non-tenured teacher must demonstrate an infringement upon a "liberty" interest.[4]

Norbeck alleges a denial of such an interest in the board's charge of a "conflict of interest" and asserts that this is tantamount to a claim of dishonesty, casting a stigma upon him. *See Board of Regents v. Roth*, 408 U.S. 564, 574-75 (1972). In determining whether a charge of conflict of interest is similar to a charge of dishonesty, the courts must examine the "characterizations of [Norbeck's] behavior . . . in context." *Adams v. Walker*, 492 F.2d 1003, 1007 (7th Cir. 1974); *Jeffries v. Turkey Run Consolidated Sch. Dist.*, 492 F.2d 1 (7th Cir. 1974). In the context of this case, an examination of the board's charge of "conflict of interest" reveals that, at best, the statement amounts to a charge of poor judgment and not dishonesty. Thus the charge is basically equivalent to a statement alleging that Norbeck's conduct failed to meet professional standards. Such a statement does not impinge upon a liberty interest. *See Abeyta v. Taos*, 499 F.2d 323 (10th Cir. 1974) (improper job performance); *Blair v. Board of Regents*, 496 F.2d 322 (6th Cir. 1974) (failure to meet minimum standards); *Adams v. Walker*, *supra* (charges of incompetence, neglect and malfeasance). In *Scheelhaase*, *supra* at 244, we stated that the competencies of teachers are not matters of constitutional dimensions, but are peculiarly appropriate to state and local administration.

However, assuming, *arguendo*, that Norbeck was deprived of a "liberty" interest, we find that he was *not* denied due process. In *Hortonville Joint Sch. Dist. No. 1 v. Hortonville Education Ass'n*, 96 S.Ct. 2308, 2315 (1976), the Supreme Court stated that a determination of what process is due requires the consideration of the individual's interest in the decision, as well

---

[4] Iowa Code § 279.13 does not confer tenure or create an expectation of continued employment. *Brouillette v. Board of Directors*, 519 F.2d 126 (8th Cir. 1975); *Scheelhaase v. Woodbury Central Comm. Sch. Dist.*, 488 F.2d 237 (8th Cir. 1973).

as the state's interest in a particular procedure for making it. In *Hortonville* contract negotiations between the school board and the teachers' association reached impasse. The teachers then went on strike, which was illegal under Wisconsin law. The school board, after notice and hearing, terminated all the striking teachers. The teachers complained that the board, because it had participated in the negotiations, was not sufficiently impartial to exercise discipline over the striking teachers. Under state law the school board was the only entity empowered to hire or fire the teachers. The court held:

> A showing that the Board was "involved" in the events proceeding this decision, *in light of the important interest in leaving with the Board the power given by the state legislature*, is not enough to overcome the presumption of honesty and integrity in policymakers with decision making power.

Id. at 2316 (emphasis added).

We find *Hortonville* dispositive of the constitutional and statutory issues before us.[3] First, the board, under Iowa law, was the only body empowered to renew, or not renew, teachers' contracts. Second, Norbeck's allegation that one of the board members tried to influence a member of the Black community to testify against him at the public hearing states no greater "involvement" than was present in *Hortonville*. We conclude, in light of the significant role in maintaining integrity and efficiency in school administration given the board by the Iowa legislature, that the allegation here is not of sufficient substance to overcome the presumption of honesty and integrity that clothes decision makers.

---

[3] In the absence of specific rules, regulations, or further definition by the Iowa Supreme Court, this court has interpreted § 279.13 as a legislative basis to provide non-tenured teachers with procedural due process. *Brouillette v. Board of Directors*, 519 F.2d 126 (8th Cir. 1975).

Lastly, we turn to Norbeck's assertion of a conspiracy to deny him equal protection of law under 42 U.S.C. §§ 1985 and 1986. In his fourth amendment Norbeck attempted to amend Counts I, II and III to allege a conspiracy under §§ 1985 and 1986. The district court denied leave to amend Counts II and III, but allowed Norbeck to amend Count I. The defendants then moved to dismiss the claim under Count I. Norbeck proffered his fifth and sixth amendments which attempted to amplify his conspiracy allegations. The district court denied Norbeck's sixth application to amend and dismissed his conspiracy allegation in Count I on the ground that there was no serious allegation that the defendants denied Norbeck equal protection of the law, or that their conduct was motivated by racial or some other class based animus.

Fed. R. Civ. P. 15(a) specifically provides that permission to amend "shall be freely given when justice so requires," but the standard of review by the court of appeals is whether the district court abused its discretion. *See Reserve Mining Co. v. EPA*, 514 F.2d 492 (8th Cir. 1975); *Zatina v. Greyhound Lines, Inc.*, 442 F.2d 238 (8th Cir. 1971). The district court had previously granted summary judgment for the defendants on Count III, and dismissed Count II for failure to state a claim upon which relief could be granted. We find that the district court did not abuse its discretion in denying plaintiff the right to amend Counts II and III, as the conspiracy allegation did not remedy the deficiencies of Counts II and III.

The only issue remaining relates to the district court's dismissal of Norbeck's conspiracy amendment of Count I. Assuming that the defendants discriminated against Norbeck because they allowed classroom teachers to join the DEA and denied supervisory personnel (including principals) that right, we find, for the reasons previously discussed, that this is a reasonable classification justified by a state's compelling interest in maintaining close working relationships with its supervisory person-

nel. Thus, no invidious discrimination exists.[6] Since we find that Norbeck has not properly pled a claim for conspiracy under § 1985, he cannot maintain an action under § 1986 for failure to prevent a conspiracy actionable under § 1985.

Judgment in favor of each of the defendants is affirmed.
Bright, Circuit Judge, concurring:

I agree with the majority's conclusion that a school district may, on pain of nonrenewal of the principal's employment contract, forbid a high school principal from serving as chief negotiator for a labor organization representing the interests of teachers whom the principal is obligated to evaluate and supervise on behalf of the school board without violating the principal's first amendment right. What gives me concern here is that appellant Norbeck, for all that appears in the record, did not hear of the school district's objection on conflict of interest grounds until the nonrenewal of Norbeck's contract. I am not at all certain that a school district may acquiesce in a principal's serving as a union negotiator and then fail to renew his contract because of it. However, Norbeck has not precisely raised this issue on appeal and we do not reach it.

Accordingly, I concur in the result.

A true copy.

Attest:

Clerk, U.S. Court of Appeals, Eighth Circuit.

---

[6] In addition, our review of the pleadings shows that Norbeck has failed to allege, with any degree of particularity, some overt act committed by the defendants in furtherance of a conspiracy. Taken as a whole, the allegations in the complaint indicate little more than the meeting of board members to consider and discuss the renewal of Norbeck's contract. If allegations of this type were sufficient to allege a conspiracy, then every state administrative action could be made the subject of a civil rights action under § 1985(3). *See Powell v. Workmen's Comp. Board*, 327 F.2d 131 (2d Cir. 1964).

APPENDIX B

United States Court of Appeals
For the Eighth Circuit

75-1613 September Term, 1976

Eskel Norbeck, Appellant, vs. Davenport Community School District, et al., Appellees.		Appeal from the United States District Court for the Southern District of Iowa

The Court having considered petition for rehearing en banc filed by counsel for appellant and, being fully advised in the premises, it is ordered that the petition for rehearing en banc be, and it is hereby, denied.

Considering the petition for rehearing en banc as a petition for rehearing, it is ordered that the petition for rehearing also be, and it is hereby, denied.

December 28, 1976

APPENDIX C

Constitutional and Statutory Provisions

First Amendment, Constitution of the United States

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Seventh Amendment, Constitution of the United States

> In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

Title 42 U.S.C. Section 1983

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1976

No. 1331

ESKEL NORBECK,
Petitioner,

vs.

DAVENPORT COMMUNITY SCHOOL DISTRICT: H. H. WEST: JACK SMIT: DALE E. PAUSTIAN: LAFAYETTE J. TWYNER, Individually and in Their Capacity as Members of the Board of Directors of the Davenport School Community District,
Respondents.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

To the United States Court of Appeals for the Eighth Circuit

CHARLES E. MILLER
700 Davenport Bank Building
Davenport, Iowa 52801
Attorney for Respondents

Of Counsel
ROBERT V. P. WATERMAN
LANE & WATERMAN
700 Davenport Bank Building
Davenport, Iowa 52801

St. Louis Law Printing Co., Inc., 812 Olive Street 63101 314-231-4477

SUBJECT INDEX

Table of Authorities

Cases

Constitutional Provisions

Statutes

Rules of Court

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1976

No. 1331

ESKEL NORBECK,
Petitioner,

vs.

DAVENPORT COMMUNITY SCHOOL DISTRICT: H. H. WEST: JACK SMIT: DALE E. PAUSTIAN: LAFAYETTE J. TWYNER, Individually and in Their Capacity as Members of the Board of Directors of the Davenport School Community District,
Respondents.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

To the United States Court of Appeals for the Eighth Circuit

STATEMENT OF THE CASE

Eskel Norbeck (Petitioner) was terminated from his position as principal of Davenport (Iowa) Central High School in May 1973. Respondents are all members of the Board of Education who voted to terminate his contract. At that time Iowa

had no teacher tenure law. Petitioner was accorded all applicable rights under Iowa's teacher termination statute. (§ 279.13 Code of Iowa 1973.)

Among these rights was the right to be informed of the reasons for dismissal. Petitioner was advised that reasons for his termination included: poor performance in his job; poor judgment; failure to provide leadership and good discipline; and inability to relate to parents. Of eight specific examples supporting these reasons, Petitioner complains of only one: "Conflict of interest resulting from your acting as chief negotiator for the Davenport Education Association (D.E.A.)." Other examples related to problems concerning order and discipline, teacher evaluation and lack of good judgment. See Petitioner's Petition for a Writ of Certiorari at p. 6.

Petitioner's claims were tried to a jury in the United States District Court for the Southern District of Iowa. The trial lasted approximately two weeks. Respondents made timely motions for a directed verdict which were denied. Thereafter the jury was instructed that if Petitioner's activities in the D.E.A. were a substantial factor in the Respondents' decision to terminate, then it was required to find that Respondents had voted to terminate for an impermissible reasons. The jury was also instructed to balance Petitioner's First Amendment rights to freedom of association against Respondents' interest in maintaining order and efficiency in the public schools. The jury returned a verdict in favor of all Respondents.

The United States Court of Appeals for the Eighth Circuit affirmed the judgment for Respondents. In its opinion the Court of Appeals decided, *inter alia* that Petitioner had not generated a fact question for the jury and that the trial court should have granted Respondents' motions for directed verdict. The Petition for a Writ of Certiorari is a result of the Court of Appeals' judgment.

ARGUMENT

I

Petitioner Has Not Shown Sufficient Reasons to Support a Writ of Certiorari

The Supreme Court's review of a Circuit Court's decision is "not a matter of right but of sound judicial discretion . . . granted only where there are special and important reasons therefor." Rule 19(1), Rules of the Supreme Court of the United States. It is reserved for review of conflicts between decisions of the various courts of appeals; to settle important questions of federal law; or to correct decisions made in conflict with applicable decisions of this Court. See generally, Rule 19(1)(b), Rules of the Supreme Court of the United States.

Even assuming, arguendo, Petitioner correctly states the law to be applied on submission of First Amendment claims to a jury, he still fails to show any impropriety on the part of the Court of Appeals in this action. The Seventh Amendment does not permit, nor require, a submission to the jury when plaintiff fails to meet his burden of proof. A court of appeals may independently evaluate the question of submissibility.

In *Neely v. Eby Construction Co.*, 386 U.S. 317 (1967) the following question was presented for review:

> "Do Rules 50(d) and 38(a) Federal Rules of Civil Procedure and the Seventh Amendment to the Constitution of the United States preclude the Court of Appeals from instructing the trial court to dismiss an action wherein the trial court denied the defendant's motions for a new trial and for judgment notwithstanding the verdict and entered judgment for plaintiff?" 386 U.S. at 321 fn. 3.

This Court answered in the negative:

> "As far as the Seventh Amendment's right to jury trial is concerned, there is no greater restriction on the province of the jury when an appellate court enters judgment *n.o.v.* than when a trial court does; consequently there is no constitutional bar to an appellate court granting judgment *n.o.v.*" 386 U.S. at 322.

And further that:

> "[t]he purpose of Rule 50 to speed litigation and avoid unnecessary retrials would not be served if there were an ironclad rule that the court of appeals could never order a dismissal or judgment for defendant when plaintiff's verdict has been set aside on appeal." 386 U.S. at 326.

In light of the *Neely* court's ruling, it should be self-evident that the Circuit Court's action in the instant case involves no restriction on the right to trial by jury. (Compare this Court's action in *United States v. Generes*, 405 U.S. 93 (1972). Petitioner has demonstrated no significant or important reason to review the Circuit Court's action.

II

The Circuit Court of Appeals Properly Decided Petitioner's Appeal

Petitioner's arguments concerning the opinion issued by the Eighth Circuit Court of Appeals beg the question concerning the Seventh Amendment right to trial by jury. It is well settled that although the Seventh Amendment preserves the right to trial by jury and prevents facts tried by a jury from being "otherwise reexamined in any court of the United States" the court's inherent power concerning such matters of law as admissibility of evidence and submission of fact questions to the jury remains inviolate. See e.g., *Galloway v. United States*, 319 U.S. 372 (1943).

This is reflected in 28 U.S.C. § 2106 which permits the Supreme Court or any other appellate court to "affirm, modify, vacate, set aside or reverse any judgment, decree or order of a court lawfully brought before it for review." This statute does not permit the appellate court to reexamine facts determined by a jury, but rather to consider the law as applied by the trial court. See also, Federal Rules of Civil Procedure 38(a) and 50(a) and (b).

In the case at bar, Petitioner concedes that he received a jury trial after which an adverse verdict was returned against him. This verdict was affirmed on appeal. Petitioner's contention that the Circuit Court reexamined facts which had been before the jury is puerile. Obviously, the Circuit Court was obligated to review the record, but only to determine whether Petitioner's evidence generated a material issue of fact for submission to the jury. See, *O'Neill v. Kiledjian*, 511 F.2d 511, 513 (6th Cir. 1975). See also, *Brady v. Southern Ry. Co.*, 320 U.S. 476 (1943). The appellate court's opinion makes clear that this limited factual review occurred. At page A-9 of Petitioner's Petition for Certiorari, the Eighth Circuit is quoted:

> "Whether Norbeck was lawfully exercising a constitutional right was a question for the Court and not for the jury. We find, even assuming the truth of Norbeck's contention, that the evidence failed to show any infringement of a constitutional right and should not have been submitted to the jury as a possible basis of recovery under Section 1983." 545 F.2d 63, 68 (8th Cir. 1976).

It is also apparent the Circuit Court considered Norbeck's allegations and accepted as true the supportive evidence adduced at time of trial. The Court then determined that Petitioner failed to carry his burden of proof and the district court erred in submitting the case to the jury rather than directing a verdict for all defendants.

It is well settled that the Seventh Amendment does not deprive "the federal courts of power to direct a verdict for insufficiency of evidence, . . ." *Galloway v. United States, supra,* 319 U.S. at 389. Petitioner apparently seeks to have this Court state that speculation may be substituted for facts in determining whether a case should be submitted for jury determination. *Cf. Galloway, supra,* 319 U.S. at 395.

The Court's inherent ability to police the jury's consideration of facts was recognized in *Pernell v. Southall Realty,* 416 U.S. 363 (1974). Justice Marshall therein restated the ability of the trial court to control a jury by the use of its power to direct a verdict, to grant judgments notwithstanding the verdict, or to grant a new trial. 416 U.S. at 368. Of course in this instance the trial court did not direct a verdict but rather submitted the case to a jury. Therefore if error exists, it is harmless error for the reason that plaintiff received more than that to which he was entitled. The Court of Appeals properly reviewed as a matter of law the trial court's decisions concerning the submissibility of the case and determined that the district court had erred. No other factual review occurred, and the Circuit Court certainly did not "reexamine" facts tried by the jury.

The district court's charge to the jury included a requirement that the jury balance Petitioner's interest in being chief negotiator for the teacher's union against the Respondents' interest in preserving and fostering the efficiency of the public schools. The jury was instructed that if Norbeck's role as a negotiator played any part in the decision to terminate him the termination was void. Under the rationale of *Mount Healthy City School District v. Doyle,* 45 U.S.L.W. 4079 (U.S. January 11, 1977), these instructions were clearly error, but once again they were harmless for the reason that the law as it presently stands will not permit a public employee to shelter behind a constitutionally protected act when termination is justifiable on other grounds.

> "The constitutional principle at stake is sufficiently vindicated if such an employee is placed in no worse a position than if he had not engaged in the [constitutionally protected] conduct. . . . But that same candidate ought not to be able by engaging in such conduct, to prevent his employer from assessing his performance record and reaching a decision to rehire on the basis of that record, simply because the protected conduct makes the employer more certain of the correctness of its decision." 45 U.S.L.W. at 4082.

The only scintilla of evidence adduced to support Petitioner's contention that his First Amendment rights were violated were two isolated references to the fact that Petitioner's membership in the D.E.A. was an example of his poor judgment.[1] The evidence at trial, on the other hand, established Petitioner's inability to maintain discipline at Central High School, and his poor performance as the chief administrative officer of that high school.

Even if Petitioner was fired in part because of his membership in and advocacy for the teacher's union (which Respondents do not concede), that membership and advocacy will not shelter him from termination for other job performance inadequacies or shortcomings. See, *Mt. Healthy, supra.* Once again any error in the record inured to Petitioner's benefit, and is therefore harmless.

---

[1] Cf. Justice Marshall in *Pickering v. Board of Education*: "We also note that this case does not present a situation in which a teacher's [activities] . . . call into question his fitness to perform his duties . . . In such a case, of course, the [activities] would merely be evidence of the teacher's general competence, or lack thereof, . . ." 391 U.S. 563 at 573 fn. 5 (1968).

CONCLUSION

The Eighth Circuit Court of Appeals review of facts considered by the jury was limited to a determination whether Petitioner had proved enough to generate a fact question for jury determination. The Court of Appeals decided that under the applicable law, no evidence had been introduced which would warrant a verdict in favor of Petitioner and that therefore the trial court erred in submitting the case to the jury. The error of the trial court, however, was harmless because Petitioner received more than his due. Petitioner points to no issue of overriding national or constitutional significance requiring a decision or examination by this Court. The Petition for Certiorari should be denied.

CHARLES E. MILLER
700 Davenport Bank Building
Davenport, Iowa 52801
Attorney for Respondents

Of Counsel

ROBERT V. P. WATERMAN
LANE & WATERMAN
700 Davenport Bank Building
Davenport, Iowa 52801
(319) 324-3246